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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

JONATHAN L. CARTER,

Defendant and Appellant.

B214038

(Los Angeles County  
Super. Ct. No. SA055214)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Robert P. O'Neill, Judge. Affirmed.

Derek K. Kowata, under appointment for the Court of Appeal, for  
Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant  
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Susan  
Sullivan Pithey and Tasha G. Timbadia, Deputy Attorneys General, for Plaintiff and  
Respondent.

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## ***INTRODUCTION***

Jonathan Carter was convicted of second degree murder and attempted carjacking, with firearm and gang allegations found true. The trial court sentenced him to a term of 40 years to life—15 years to life for the murder count, plus 25 years to life for the firearm enhancement. Carter appeals, claiming the trial court improperly limited the testimony of his expert witness and the gang allegations were not supported by substantial evidence. We affirm.

## ***FACTUAL AND PROCEDURAL SUMMARY***

On November 20, 2004, Christopher Adams was driving his friend’s 1986 Chevy El Camino. It had been modified with performance parts, 20-inch rims and a custom steering wheel that could only be removed and replaced with a special key—an anti-theft measure.

Black P-Stone gang members Melvin Jones, known as “Jungle Boy” or “JB”, and Kenny Robinson (“Flag”), picked up Carter (“JD”) on Palmwood Street in Hawthorne. Jones, driving a car one of his girlfriends had rented a few days earlier, saw the El Camino at a nearby 7-Eleven and followed Adams as he drove away.<sup>1</sup>

Adams backed the El Camino into his driveway. Jones parked the rental car on a side street. Robinson and another man got out of the car and approached Adams.<sup>2</sup> At about 9:00 p.m., a witness (Eugene Suazo) was backing his car out of his driveway on Fonthill Avenue when he saw a car parked in the middle of the street with its lights off

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<sup>1</sup> One week before (on November 13, 2004), Adams’s sister had seen Adams in front of her apartment showing the El Camino to three people, including Black P-Stone gang member Shayna Chin (“China”) who was Jones’s “best friend[.]” On November 20, Chin followed Jones in her car.

<sup>2</sup> Suazo later identified Robinson in a “six-pack” of photographs.

and an African American man sitting alone in the driver's seat. Suazo heard four or five gunshots from the direction of 126th Street and saw two African American males, about 18 or 19 years old, running around the corner of 126th and Fonthill. He heard, "Let's go! Let's go! Let's go!" The two "young" men opened the two back doors of the car with its lights off and jumped in. They "just took off" with no lights on the car.

When police responded, they found Adams, shot in front of his apartment. He had four gunshot wounds from two different guns: three bullet wounds, including a fatal chest wound, and one shotgun wound.

Several days later, police arrested Robinson after watching as he tried to toss something into nearby bushes and recovered a gun. The semiautomatic handgun was later determined to have been the gun used to shoot and kill Adams. After Robinson's arrest and identification of the gun, Carter, Jones and Robinson were identified as potential suspects in Adams's murder.

In late January 2005, officers searched Carter's residence as well as the residences of Jones and one of Jones's girlfriends (Chanel Talley). Officers found Carter walking in the alley behind the apartment buildings where he and Jones lived and was taken into custody. Jones and Talley were both taken into custody at Talley's residence.

As a result of their search of Carter's residence, officers recovered a red L.A. baseball cap with the inscription "BPS" on the underside of the bill as well as a photograph of Carter, holding a Mossberg 12-gauge shotgun and throwing a Stone Love Westside Jungle gang sign. In another photograph, Carter was throwing gang signs along with other Black P-Stone members. Officers also found a Nextel cellular phone that belonged to Adams as well as several photographs of Jones wearing red and throwing gang signs.

After he was arrested, Carter spoke with detectives. He said he knew Robinson from elementary school and had met Jones "towards the end of last year," but "I don't even kick it with them. . . . I don't want to be caught for nothin' I didn't do." He said he was "rollin' around with Jungle Boy" (Jones) and "Flag from Pueblos" (Robinson).

Regarding Flag, Carter said, “He don’t give a fuck.” Carter acknowledged they had spotted Adams at the 7-Eleven and followed him to another street by his (Adams’s) house. He said they wanted him (Carter) to drive but he didn’t know how to drive “like that.” He acknowledged “they” discussed the plan to go after the El Camino while driving but claimed he stayed in the back of the car. He acknowledged the shotgun he was holding in the picture he was shown was the one used in the shooting but said Jones had it.

After that, detectives arranged for Carter and Jones to be placed in a cell together and taped their conversation. Carter and Jones discussed their belief Flag had “snitch[ed] on us[,] on Blackstone . . .” Carter said they had to “stick together.” He said the police knew there were two shooters and three people involved. He wanted to know what they were going to do about the second shooter and suggested claiming a fourth person was involved.

Carter was originally charged with one count each of murder (§ 187, subd. (a)), robbery (§ 211) and attempted carjacking (§§ 215, subd. (a); 664). However, in Carter’s first trial, the jury acquitted him of robbery (count 2) and deadlocked on the murder (count 1) and attempted carjacking (count 3) counts. Carter was retried on the murder and attempted carjacking counts.

At the retrial, the People presented evidence of the facts summarized above. Carter’s videotaped police interview and the recorded conversation between Carter and Jones in jail were played for the jury.

Officer Brian Thayer of the Los Angeles Police Department testified as a gang expert regarding the Black P-Stones or BPS gang. He testified regarding their territory—the Baldwin Village area known as “the Jungle.” Their main colors are red and black. Their primary activities include murders, drive-by shootings, assaults with deadly weapons, batteries, robberies, carjackings, thefts and other crimes that would bring attention to the gang. It was not uncommon for older BPS members to have younger members take a more active or risky role in the crimes committed. Thayer knew

Robinson to be a Five Deuce Pueblo gang member with dual membership in BPS because he lived in the Jungle, hung out with BPS gang members and admitted BPS membership. Jones and Chin, known as “China” and “Jungle Girl,” were also BPS gang members, based on self-admission, gang tattoos, gang attire and prior encounters. Officer Thayer opined Carter was also a BPS member based on personal encounters, Carter’s self-admission (to five different police officers), pictures of him throwing gang signs and graffiti across from his apartment. Officer Thayer also opined Adams’s murder was committed for the benefit of BPS based on the facts of the three BPS gang members driving around looking to carjack someone. Also, their crime would spread fear and intimidation in the community and murder is the “ultimate commitment” and crime for a gang.

In Carter’s defense, Lamos Sturgis testified he had been a heroin addict for 20 years and had used drugs with Carter’s stepfather Cardell Turner. Sturgis, who was incarcerated at the time of trial, had been convicted of numerous crimes, including drug offenses, forgery and petty theft. Sturgis said he had known Carter since he (Carter) was 17 and testified Carter was not a BPS gang member “to his [Sturgis’s] knowledge.”

In addition, Danielle Walker testified her profession was early childhood education. She said she was certified to teach children between the ages of six weeks and eight years old. She had also worked for the City of Los Angeles in the after-school program and for the County of Los Angeles as a “worker/counselor” in group homes in Lynwood and Compton that housed teenagers who had been abandoned, neglected or abused. She was from Watts and South Central. Using her educational training and personal life experience, she tried to provide guidance.

In her training in early childhood development, she had learned about “fantasy play.” Fantasy play, Walker testified, is a stage young children go through “where they are safe to explore and dress up or pretend to be someone other than themselves.” In the classroom or child care, it is usually called “dramatic play.” Developmental stages would be delayed, she said, if the environment is “unsecure” and not safe.

Walker said she had reviewed the police report, Carter's school records, IEP records, files from dependency court regarding Carter and his siblings and family, files from the court system regarding Carter's mother and Cardell Turner, files from Cardell Turner's drug treatment program and the photographs included in the police record in this case. Based on her academic and practical training and based on her knowledge of the case and background of Carter and his family, Walker opined the photograph she was shown depicted behavior consistent with delayed fantasy play. Similarly, in the one with the "four fingers and loving gesture," disregarding the others in the picture, but viewing Carter, the hand signs and dressing up in gangster costume constituted behavior consistent with delayed fantasy play.

The jury found Carter guilty of second degree murder and attempted carjacking and found true the special allegations. The trial court sentenced him to 40 years in state prison: 15 years to life plus 25 years for the firearm enhancement on count one (murder). Sentence on the attempted carjacking count was imposed and stayed pursuant to Penal Code section 654. The gang enhancement allegations were stricken pursuant to Penal Code section 12022.53, subdivision (e)(2).

Carter appeals.

### ***DISCUSSION***

#### **Carter Has Failed to Demonstrate Prejudicial Error in the Trial Court's Ruling with Respect to the Testimony of Danielle Walker.**

According to Carter, the trial court prejudicially erred in unfairly limiting the testimony of his expert witness (Danielle Walker). We disagree.

In addition to her testimony presented at his second trial (as summarized above), Walker opined at Carter's first trial that the prosecution photographs of Carter—in gang attire, flashing a gang sign and holding a shotgun—were not indicative of gang membership.

As she testified in Carter's second trial, Walker opined in the first trial that the photograph she was shown was consistent with delayed fantasy play. When defense counsel asked her to explain, she said, "My opinion is based on the fact that because of my experience in a gang environment, real gang bangers, number one, most likely wouldn't even have someone take a picture of them doing that. [¶] Number two, is the attire is not what a gang expert would consider to be dressed down. [¶] And let's see, I don't want to go into his background, but—"

Defense counsel then interjected, "Well, without going into the details of his background, you've spent a good deal of time reviewing his background; is that correct?"

Walker responded, "Well, based on the lack of evidence as him being a gang member, I would not believe that this portrayed him as a gang banger."

Defense counsel continued, "And the lack of evidence would be lack of gang tattoos and—"

Walker answered, "Correct."

At that point, the prosecutor asked for a sidebar. At the sidebar, the prosecutor said, "I'm going to make an objection to the testimony regarding her opinion as to—I don't think she's qualified as a gang expert. I would ask for a motion to strike her testimony regarding her opinion as to any gang-related information on this."

"The Court: [I] think that's well taken. Just being raised in a gang environment doesn't qualify one as an expert."

"[Defense counsel]: She's a lay expert. I can lay that foundation, but I'll—let me see if I can work around it."

"The Court: But she's already expressed an opinion that they're requesting me to strike. And the offer of proof was before we even—when we did this outside the presence of the jury, was that she was raised in areas where there was gang activity, and she associated with people in the community who were gang members. I don't think that necessarily qualifies her to render an opinion as she has rendered it so far."

“[Defense counsel]: All right. I’ll tighten it up and just get to the delayed-fantasy play.

“The Court: I’m going to strike her opinion about the gangs as she’s expressed it.

“[Defense counsel]: All right.”

The trial court then advised the jury: “Miss Walker’s testimony as it related to gang and gang involvement as it relates to that photograph and her knowledge therein is stricken.”

At the start of Carter’s second trial, the trial court and counsel acknowledged that all motions and rulings from the first trial would be renewed and applied at the second trial. The court directed defense counsel to review Walker’s prior testimony and the court’s ruling to be sure he understood which questions not to ask. As summarized above, she went on to testify the photographs of Carter were consistent with someone engaged in delayed fantasy play.

First, we find no error in the trial court’s exercise of its discretion to limit Walker’s testimony in the manner it did as there was no showing her background in early childhood education qualified her to testify as to gang expertise, and she was permitted to testify that Carter’s depiction in the photograph was instead consistent with delayed fantasy play. (*People v. Valdez* (1997) 58 Cal.App.4th 494, 506.) However, the jury clearly rejected this claim.

Moreover, Carter cannot demonstrate prejudice in any event. Sturgis, who knew Carter, testified Carter was not a gang member. However, Officer Thayer testified Carter had self-admitted membership in BPS to five different officers. Further, the jury heard Carter in his conversation with Jones, talking about sticking together and working out the details of their stories and providing overwhelming evidence of his BPS membership from his own mouth. (*People v. Arias* (1996) 13 Cal.4th 92, 157; *People v. Watson* (1956) 46 Cal.2d 818, 836.)

## **Substantial Evidence Supports the Gang Enhancements.**

According to Carter, the evidence was insufficient to support the true findings on the gang enhancement allegations because Jones wanted the rims from the El Camino and the crimes were committed to promote Jones's own agenda and not for the benefit of the gang or its interests. As a result, Carter says, he was deprived of his due process right to proof beyond a reasonable doubt of all elements of a charge against him. We disagree.

As the factual summary establishes, there was considerable evidence in support of the gang allegations. Notwithstanding Carter's representation to detectives that Jones said he wanted the El Camino's rims so that meant he would get the rims, Officer Thayer's testimony as well as the circumstances of the crime and all three BPS gang members' involvement and planning in the carjacking and subsequent murder sufficed to support the jury's true finding on the gang enhancement allegations. (Pen. Code, § 186.22, subd. (b).) California law does not support Carter's claim to the contrary. (*People v. Vazquez* (2009) 178 Cal.App.4th 347, 353-354.)

### ***DISPOSITION***

The judgment is affirmed.

**WOODS, J.**

**We concur:**

**PERLUSS, P. J.**

**ZELON, J.**